

procuring agency's offer of the requirement for the 8(a) program, and the estimated dollar value of the offered 8(a) award is 25 percent or more of its most recent annual gross sales (including those of its affiliates).

(d) *Release for non-8(a) competition.* In limited instances, SBA may determine that a sole source 8(a) contract being performed by either a Program Participant whose Program Term will expire prior to contract completion, or, by a former Program Participant whose Program Term has expired within one year of the date of the offering letter for the proposed procurement may be rejected so that it may be competed outside the 8(a) program. If such a determination is made, SBA will reject the procuring agency's offer of the requirement for award through the 8(a) program. In such a case, SBA will recommend that the requirement be procured as a small business set-aside or, where appropriate, through a small disadvantaged business competition authorized by Pub. L. 99-661.

(1) In making such a determination, SBA will balance the importance of the contract for the (former) Participant's stability and business development needs against the needs of other Program Participants qualified to perform the requirement in order to develop in accord with their business plan. Such a determination will include consideration of whether the rejection of the requirement would seriously reduce the pool of similar types of contracts to be fulfilled through the 8(a) program. In making such determination, SBA will also seek the views of the procuring agency.

(2) A written request for the rejection of a contract must be made to SBA by the applicable (former) Participant prior to SBA's acceptance of the requirement for the 8(a) program. SBA will not reject a requirement absent such a request.

[54 FR 34712, Aug. 21, 1989, as amended at 55 FR 34903, Aug. 27, 1990]

**§ 124.310 Approval of lower tier subcontractors.**

(a) SBA's approval must be obtained prior to a Participant's subcontracting of the performance of an 8(a) contract to another concern.

(b) SBA will not approve any subcontracting arrangement where:

(1) The performance of work requirements set forth in § 124.314 would not be met;

(2) The proposed subcontractor has been suspended, debarred, or determined to be ineligible by any Federal agency;

(3) SBA determines that the proposed subcontractor would control the performance of the requirement;

(4) SBA determines that the proposed subcontracting relationship is not an arms length agreement; or

(5) SBA determines that the proposed subcontracting arrangement is an attempt to circumvent SBA's size regulations.

**§ 124.311 8(a) competition.**

(a) *Competitive thresholds.* A contract opportunity offered to the 8(a) program for award shall be awarded on the basis of a competition restricted to eligible Program Participants if:

(1) There is a reasonable expectation that at least two eligible program participants will submit offers and that award can be made at a fair market price; and

(2) The anticipated award price of the contract, including options, will exceed \$5,000,000 for contracts assigned manufacturing Standard Industrial Classification (SIC) codes and \$3,000,000 for all other contracts.

(i) For *all* types of contracts, the applicable competitive threshold amounts will be applied to the procuring agency estimate of the total value of the contract, including all options.

(ii) Where a procuring agency good faith estimate of the total value of a proposed 8(a) contract is less than the applicable competitive threshold amount and the requirement is accepted as a sole source requirement on that basis, award may be made even though the ultimate price arrived at through negotiations exceeds the competitive threshold, provided that the ultimate price is not significantly greater than the competitive threshold amount.

*Example* If the anticipated award price for a professional services requirement is determined to be \$2.7 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the